

ORDER UNDER APPEAL



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION
AUGUSTA, ME 04333

DEPARTMENT ORDER

IN THE MATTER OF

ARTHUR B. CHOATE
Islesboro, Waldo County
PIER, RAMP, & FLOAT SYSTEM
L-24406-4P-A-N (approval)

) NATURAL RESOURCES PROTECTION
) COASTAL WETLAND ALTERATION
) WATER QUALITY CERTIFICATION
) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S.A. Sections 480-A et seq. and Section 401 of the Federal Water Pollution Control Act, the Department of Environmental Protection has considered the application of ARTHUR B. CHOATE with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. Summary: The applicant is proposing to construct a permanent granite crib supported pier system to also include a seasonal ramp and seasonal float. The permanent pier will measure 5 feet wide by 70 feet long. The granite crib foundation of the permanent pier will be constructed in an open fashion on one 10 foot wide by 10 foot long granite block foundation. To the extent possible, the applicant proposes to salvage many of the blocks for the crib from a pre-existing structure located in the intertidal and subtidal area adjacent to the project site. If more blocks are needed or granite blocks from the pre-existing structure are unobtainable, blocks will be acquired from an off-site location. The proposed design includes a 3 foot wide by 40 foot long seasonal ramp and a 15 foot wide by 25 foot long seasonal float. In addition, six timber guide piles will be installed at the landward side of the float for the purpose of support and stability for the float. The project site will be accessed by water, and the proposed pier will be built using a barge and crane. The proposed permanent pier system is necessary to update the functionality of the applicant's access to the resource by replacing the permitted temporary pier system. The project site is located on Wharf Landing Way East in the Town of Islesboro.

B. Current Use of the Site: The site of the proposed project is comprised of approximately 0.89 acres and contains an existing residential structure on an upland portion of the property. The site is referenced in the Town of Islesboro's tax maps as Lot #26 on Map #11. The deed for the proposed project is indicated in the Waldo County Registry of Deeds located in Book #2455 on Page #317.

2. EXISTING SCENIC, AESTHETIC, RECREATIONAL OR NAVIGATIONAL USES:

In accordance with Chapter 315, Assessing and Mitigating Impacts to Scenic and Aesthetic Uses, the applicant submitted a copy of the Department's Visual Evaluation Field Survey Checklist as Appendix A to the application along with a description of the property and the proposed project.

The applicant also submitted several photographs including an aerial photograph of the proposed project site. Department staff visited the project site on February 10, 2009.

The proposed project is located in Penobscot Bay, which is a scenic resource visited by the general public, in part, for the use, observation, enjoyment and appreciation of its natural and cultural visual qualities. Although the project is visible from vantage points on the water, the project is not visible from nearby scenic resources of statewide significance. These nearby scenic resources include Dark Harbor and Main Road Overlook. These resources are located approximately 1000 feet and 3300 feet, respectively, from the project site.

The area immediately surrounding the project area is well screened from direct adjacent views by large vegetation. In addition, the applicant stated that there are 17 residential piers within a one mile radius of the project site.

The proposed project was evaluated using the Department's Visual Impact Assessment (VIA) Matrix and was found to have an acceptable potential visual impact rating. Based on the information submitted in the application, the visual impact rating and the site visit, the Department determined that the location and scale of the proposed activity is compatible with the existing visual quality and landscape characteristics found within the viewshed of the scenic resource in the project area.

The applicant stated that local sea traffic consists primarily of recreational vessels with commercial lobster fishing vessels operating in the area. However, there are no lobster traps set in the immediate area proximate to the project site.

In letters from interested party members (parties) dated November 20, 2008, November 25, 2008, December 3, 2008, January 20, 2009, and January 23, 2009, parties stated their concerns about the proposed project. With regards to scenic character of the area, parties stated that the east side of Islesboro is an unspoiled and wild stretch of land with few existing docks. Further, parties stated that the proposed project has no regard for the right of the public to view the coastline whether from the land or the resource. Further, parties asserted that the applicant will be utilizing granite blocks from remnants of an old steamboat landing as the crib foundation of the pier. Parties stated that this landing, its associated uses, and the ferries that used the landing appear in history books of Islesboro. This landing, according to parties, was the island's primary maritime access in the mid-1930s prior to the introduction of vehicles on the island. The Department reviewed and considered the concerns addressed by the parties.

The Maine Historic Preservation Commission (MHPC) reviewed the proposed project and stated in a letter dated December 18, 2008 that there would be no historic properties affected by the proposed project. In response to letter from parties, the MHPC determined that the information submitted by parties was worth evaluating to determine if the existing structure had historic significance and integrity. In a statement, dated March 6, 2009, MHPC commented the agency re-evaluated the proposed project by reviewing plans, a historic drawing, and photographs of the existing remains of the wharf's granite blocks. Based on this review, MHPC concluded that the December 18, 2008 finding that no historic properties would be affected by the proposed project stands.

Based on the visual impact rating and the Department's site visit, the Department finds that the proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses of the protected natural resource.

3. SOIL EROSION:

The applicant stated that the contractor will be required to follow industry standards for erosion control features during the installation of the pier. The majority of the construction will be over the water. In instances where soil disturbance will occur, the applicant stated that Best Management Practices for erosion controls will be followed.

The Department finds that the activity will not cause unreasonable erosion of soil or sediment nor unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.

4. HABITAT CONSIDERATIONS:

According to the Geographic Information Systems (GIS) mapping database, there are no significant wildlife habitats located within the project site.

The Maine Department of Inland Fisheries and Wildlife (MDIFW) reviewed the proposed project and stated that there are no Essential or Significant Wildlife Habitats at the project site.

The Department of Marine Resources (DMR) stated that the proposed project should not cause any significant adverse impact to marine resources, navigation or recreation. DMR stated that the intertidal area is a continuation of supratidal ledge approximately 70 feet wide with moderate rockweed cover. Regarding the use of granite blocks from the adjacent existing structure, DMR commented that these granite blocks are exposed at low tide, and rockweed is attached. In addition, any of these granite blocks that will be utilized for construction of the pier should be kept intact and should be placed on the outside of the new pier support to the extent possible.

The applicant stated that he agrees with DMR's recommendation and will keep all marine vegetation which is attached to salvaged granite blocks intact. Further, that applicant agreed to place these blocks in a manner such that the marine vegetation is on the outside of the pier supports.

The Department finds that the activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life.

5. WATER QUALITY CONSIDERATIONS:

The Department does not anticipate that the proposed project will violate any state water quality law, including those governing the classification of the State's waters.

6. WETLANDS AND WATERBODIES PROTECTION RULES:

In order to construct a granite crib supported pier, ramp, and float system, the applicant proposes to directly alter 100 square feet of intertidal area and 6 square feet of subtidal area. The proposed

pier would indirectly alter 250 square feet of intertidal area. The proposed ramp and float would indirectly alter 60 square feet of intertidal area and 435 square feet of subtidal area.

The Department's Wetlands and Waterbodies Protection Rules, Chapter 310, require that the applicant meet the following standards:

A. **Avoidance.** No activity may be permitted if there is a practicable alternative to the project that would be less damaging to the environment. Each application for a Natural Resources Protection Act permit must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist. The applicant submitted an alternative analysis for the proposed project completed by Gartley & Dorsky Engineering & Surveying and dated October 30, 2008.

The applicant considered several alternative options to the proposed project:

- The applicant considered sharing an abutting or nearby pier. However, the applicant determined that this was not a feasible alternative option because the closest private pier is on the east side of the island is 0.6 miles to the south of the project site.
- The applicant considered utilizing a public or private slip/mooring space. The applicant determined that there are no slips or mooring spaces available at the local and private marinas. The applicant contacted the municipal code enforcement office who stated that there is a waiting list for mooring space at the public marinas known as Ferry Dock and Big Tree.
- The applicant considered usage of dock facilities at the Tarratine Club. The applicant stated that the Tarratine club does not allow its members to have boats on their floats. The purpose of the floats is only for loading and offloading passengers. The applicant further stated that only dinghies are allowed to be at the dock for longer durations of time.
- The applicant acknowledged that a relative owns a dock on the western side of the island. However, the applicant stated that permission to use this dock has not been extended to him, nor does he hold the rights to use that property in any manner. Thus, the applicant determined that this dock is not a viable alternative option to the proposed project.

Parties have stated in letters referenced in Finding #2 that the applicant has access and membership to a private docking facility, known as the Tarratine Club, located on the west side of Islesboro. Parties also stated that this facility is near the applicant's residence. Further, parties stated that the applicant has access to a family dock on the west side of the island. The Department reviewed and considered the concerns addressed by the parties.

B. **Minimal Alteration.** The amount of wetland to be altered must be kept to the minimum amount necessary for meeting the overall purpose of the project. The applicant considered many strategies for minimization. The applicant designed the project in a location where the least amount of direct and indirect impact to the coastal wetland would occur. In addition, this location was chosen because it provides the most vegetative screening from views of adjacent properties, to the extent possible. Further, the applicant determined that two granite foundations would be necessary at the other locations that the applicant considered; thus, the applicant determined that wetland impacts could be minimized by using one granite foundation at the proposed location.

Overall, the applicant designed the pier system such that disturbance to the resource is minimal and navigation within the harbor remains unobstructed.

C. Compensation. In accordance with Chapter 310 Section 5(C), the goal of compensation is to achieve no net loss of wetland functions and values. The applicant does not propose to alter or fill 500 square feet or more of intertidal or subtidal area, which is the threshold over which compensation is generally required. Further, the proposed project will not have an adverse impact on marine resources or wildlife habitat as determined by DMR and MDIFW. Due to these facts, the Department determined that compensation is not required.

The Department finds that the applicant has avoided and minimized wetland impacts to the greatest extent practicable, and that the proposed project represents the least environmentally damaging alternative that meets the overall purpose of the project.

7. OTHER CONSIDERATIONS:

The Department did not identify any other issues involving existing scenic, aesthetic, or navigational uses, soil erosion, habitat or fisheries, the natural transfer of soil, natural flow of water, water quality, or flooding.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S.A. Sections 480-A et seq. and Section 401 of the Federal Water Pollution Control Act:

- A. The proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses.
- B. The proposed activity will not cause unreasonable erosion of soil or sediment.
- C. The proposed activity will not unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.
- D. The proposed activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life.
- E. The proposed activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.
- F. The proposed activity will not violate any state water quality law including those governing the classifications of the State's waters.
- G. The proposed activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.
- H. The proposed activity is not on or adjacent to a sand dune.

1. The proposed activity is not on an outstanding river segment as noted in Title 38 M.R.S.A. Section 480-P.

THEREFORE, the Department APPROVES the above noted application of ARTHUR B. CHOATE to construct a granite crib supported pier system to include a seasonal ramp and seasonal float, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations:

1. Standard Conditions of Approval, a copy attached.
2. The applicant shall take all necessary measures to ensure that his activities or those of his agent do not result in measurable erosion of soil on the site during the construction of the project covered by this approval.
3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
4. The applicant shall take appropriate measures to store the seasonal ramp and float on the permanent pier or outside of the coastal wetland.
5. The applicant shall keep all marine vegetation which is attached to salvaged granite blocks intact. The applicant shall place these blocks in a manner such that the marine vegetation is on the outside of the pier supports.

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DEPARTMENT OF ENVIRONMENTAL PROTECTION



This permit has been digitally signed by Andrew C. Fisk on behalf of Commissioner David P. Littell. It is digitally signed pursuant to authority under 10 M. R.S.A. § 9418. It has been filed with the Board of Environmental Protection as of the signature date 2009.03.24 06:41:34 -04'00'

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES...

bc/ats#69014/124406an